

Ord. # 5324

AN ORDINANCE TO AMEND, CHAPTER 21, ARTICLE III OF THE CODE OF ORDINANCES SO AS TO PROHIBIT USING TEXT MESSAGING SERVICES WHILE OPERATING A MOTOR VEHICLE

WHEREAS, The State of Tennessee currently has in effect Tennessee Code Annotated 55-8-19__, which prohibits a driver from using text messaging services while operating a motor vehicle; and

WHEREAS, Tennessee Code Annotated 16-18-302 (a)(1-2) recognizes and authorizes a municipal court to possess jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00).

WHEREAS, Tennessee Code Annotated 55-8-19_ (d) provides that violation of the Tennessee Code Annotated 55-8-19_ is a Class C misdemeanor; and

WHEREAS, the City Council of the City of Memphis intends to exercise its authority to enact new traffic ordinances.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 21, Article III, is hereby amended to create a new section 21-134.6 to read as follows:

Sec. 21-134.6 Texting while driving.

(a) For the purpose of this section, unless the context otherwise requires:

(1) "Mobile telephone" – means a cellular, analog, wireless or digital device that provides for voice communication and for data communication other than by voice; and

(2) "Personal digital assistant – means a wireless electronic communication device that provides for data communication other than by voice.

(b) No driver shall operate a motor vehicle on any highway while using a hand held mobile telephone or a hand held personal digital assistant to transmit or read a written message while such vehicle is in motion; provided, that a driver does not transmit or read a written message for the purpose of this subsection if such driver reads, selects or enters a

telephone number or name in a hand held mobile telephone or a personal digital assistant for the purpose of making or receiving a telephone call.

(c) The provisions of this section shall only apply to a person driving a motor vehicle that is in motion at the time a written message from a mobile telephone or hand-held personal digital assistant is transmitted or read by such person.

(d) A violation of any provision of this section is a Class C misdemeanor, subject only to imposition of a fine, not to exceed fifty dollars (\$50.00), and court costs, not to exceed ten dollars (\$10.00), including, but not limited to, any statutory fees of officers. No state or local litigation taxes shall be applicable to a case prosecuted under this section.

(e) The provisions of this section shall not apply to the following persons:

(1) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the actual discharge of their official duties;

(2) Campus police officers and public safety officers, as defined by T.C.A. § 49-7-118, when in the actual discharge of their official duties;

(3) Emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and career, when in the actual discharge of their official duties; and

(4) Emergency management agency officers of the state, or of any county, city or town, when in the actual discharge of their official duties.

(f) A traffic citation that is based solely upon a violation of this ordinance shall be considered a nonmoving traffic violation and no points shall be added to a driver record for such violation.

SECTION 2. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Jim Strickland
City Councilman

Attest:
Patrice Thomas, Comptroller

THE FOREGOING ORDINANCE

5324 PASSED

1st Reading 7-21-09

2nd Reading 8-4-09

3rd Reading 8-18-09

Approved [Signature]
Chairman of Council

Date Signed: 09/01/2009

Approved: [Signature]
Mayor, City of Memphis

Date Signed: 9/3/09

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipes
Comptroller